

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5597 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASHOK N UPADHYAYA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR JITENDRA M PATEL for Petitioner

MR HL PATEL for Respondent No.1

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner was appointed on the post of Social Welfare Inspector in the office of Amreli Jilla Panchayat after having been selected for the said post by Gujarat Panchayat Service Selection Board. The order of

appointment is dated 4.7.80. It is not in dispute between the parties that inter-district transfer is permissible. The petitioner, for his domestic and personal reasons, applied for inter-district transfer to district panchayat, Bharuch. The district Panchayat Bharuch consented to this transfer which is apparent from the document annexure 'A-1', dated 8.4.81. The Development Commissioner, under its order dated 7.5.81, approved the transfer of the petitioner from District Panchayat, Amreli, to District Panchayat, Bharuch. It is also not in dispute in between the parties that the Development Commissioner was the competent authority to make inter-district transfer. Thereafter the District Development Officer, Bharuch, under the order dated 29.5.81, posted the petitioner as a Senior Welfare Inspector in the District Panchayat, Bharuch. In the year 1981, some of the persons from Panchayat who went on deputation to the State Government returned back to the respective Panchayats. As the petitioner has apprehension of termination of his services, he approached this Court and the petition filed by the petitioner, viz. Special Civil Application No.4783 of 1981 was ultimately disposed of on 19.7.83. The petition was withdrawn by the petitioner as he wanted to approach the Development Commissioner by way of representation to request for his transfer in another District Panchayat under Rule 3(1)(a)(ii) of the Gujarat Panchayats Service (Transfer of Servants) Rules, 1968 (hereinafter referred to as Rules, 1968). Interim relief was ordered to be extended for a period of two weeks from the date on which the Development Commissioner was to pass the order on representation of the petitioner. The petitioner made representation accordingly, but the Development Commissioner has not taken any final decision thereon. About 100 posts of Social Welfare Inspector were lying vacant in the State Government and therefore an advertisement was issued by the Director of Social Welfare Department inviting applications for the said post stating that the candidate should be graduate in Arts, Commerce, Science, Agriculture or Law or in any other faculty. It has also been stated that the persons having exceptional qualifications and experience will be given relaxation in age limit. In response to the said advertisement, the petitioner applied for the said post. The petitioner was possessing qualification of B.Com. and Law degree in addition of having experience of the post for about four years. The petitioner was not called for interview on the ground of age bar. Having apprehension of termination of services, the petitioner filed this writ petition before this Court. The petitioner has come up with the case that 24 posts are

still lying vacant in the State Government. After filing of this writ petition, amendment has been prayed for by the petitioner and further averments have been made. He has come up with the case that three posts of Social Welfare Inspector which are taken under the State Government at Bharuch, Ankleshwar and Hansot are lying vacant and the petitioner can be accommodated on any of the said posts. It has further been stated that after filing of this petition, the petitioner came to know that the District Development Officer has also requested the State Government to absorb the petitioner in the State Government pointing out that there are certain posts lying vacant and proper justice can be given to the petitioner if he is absorbed in service. The respondent No.5 who has been appointed vice petitioner has not taken charge of the post.

2. None of the respondents, except the Director of Social Welfare Department, have filed reply to this Special Civil Application. Reason given for not calling the petitioner for interview is that he was age barred on the last date of receipt of application. Rest of the contents of petition have not been controverted. No other reason has been given for not calling the petitioner for interview. The respondent has also not stated in reply as to why the petitioner was not given age relaxation on the basis of special qualifications.

3. On 14.11.84, this Special Civil Application has come up for admission before this Court. This Court has been pleased to issue notice to the respondents returnable on 12.12.84. Interim relief in terms of para 19-B and 19-C has also been granted. Rule was issued on 11.9.85 and interim relief was ordered to continue. Para 19-B and 19-C reads as under:

"to direct the respondent Nos. 2 and 3 not to terminate the petitioner's service from the post of Social Welfare Inspector;

to direct respondent No.4 for keeping one post of Social Welfare Inspector vacant and direct him to consider the petitioner's case for the appointment on the said post."

In pursuance of interim relief of this Court, the petitioner is working for all these years on the post of Social Welfare Inspector in the office of District Panchayat, Bharuch. One post of Social Welfare Inspector is also lying vacant as per interim relief granted by this Court, in the office of respondent No.4.

4. The learned counsel for the petitioner made twofold submissions before this Court. Firstly, it has been contended that the representation which has been filed by the petitioner before the Development Commissioner for his transfer to other District Panchayat has not been decided so far. This representation has been made by the petitioner in pursuance of the directions given by this Court in Special Civil Application No. 4783 of 1981 filed by him earlier. It has next been contended that the petitioner has been appointed as Social Welfare Inspector in the Panchayat services after selection by the Gujarat Panchayat Service Selection Board in the year 1980 and on that date he was within the age limit prescribed for the appointment in the Government services. Inter-district transfer was permissible under the Rules 1968 and under the order of the Development Commissioner, he has been transferred from Amreli to Bharuch. The respondent No.4 called for applications for recruitment of the post of Social Welfare Inspector wherein it has been provided that in the case of persons having exceptional qualifications and experience, the maximum age limit laid down is relaxable. The petitioner has exceptional qualification and experience. He had to his credit, experience of four years for the same post, may be in the Panchayat, but this aspect has not been considered and his application has been mechanically rejected.

5. On the other hand, the learned counsel for the respondent No.4 contended that the application of the petitioner for the post of Social Welfare Inspector in the Government service has rightly been rejected as he was age barred.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. It is true that if we go by advertisement, the petitioner was age barred for the post of Social Welfare Inspector and in that case, there may not be any illegality in not calling him for interview. But this Court cannot be oblivious of the fact that relaxation in the age has been provided for the persons having exceptional qualifications and experience. In the advertisement, though it is not enumerated what are exceptional qualifications and experience, but it is a matter to be decided by the authority concerned where a person claims relaxation in age. The petitioner possessed qualification of B.Com. & LL.B. The minimum qualification for the said post required under the advertisement, annexure 'F' was, graduate in Arts,

Science, Commerce, Law, etc. Degree in law was minimum qualification for eligibility and as such, it may not be exceptional qualification, but this is a matter which has to be decided by the authority concerned. From the reply which has been filed by respondent No.4, it is clear that the petitioner's case was not considered with reference to the question whether in his case age limit can be relaxed or not. Clause 4 of the advertisement annexure 'F' provides that relaxation in age may be considered in cases of persons who are having exceptional qualification and experience or either of the one. Leaving apart whether the petitioner has exceptional qualification or not, the petitioner had four years' experience to his credit on the post of Social Welfare Inspector in the District Panchayat. This experience was gained by the petitioner after he was selected by the Gujarat Panchayat Service Selection Board. Four years' experience on the post on which recruitment has to be made by the Government may be a relevant consideration for relaxation of age limit as eligibility. Rejection of the application of the petitioner in the present case by respondent No.4, which he submitted in response to the advertisement dated 24.10.83, annexure 'F', is not proper. It is a case where there is total non application of mind to the question whether the petitioner could have been given relaxation of age limit or not. The decision of rejection of the application of the petitioner's application for the post of Social Welfare Inspector in the Government service cannot be allowed to stand.

6. In the result, this Special Civil Application succeeds and the same is allowed. The respondents No. 1 and 4 are directed to consider the application of the petitioner which was submitted in response to the advertisement, annexure 'F', dated 24.10.83, for the post of Social Welfare Inspector with reference to relaxation of age eligibility on the ground that he possessed qualification of LL.B. and experience on the post of Social Welfare Inspector for four years. In case the respondent No.1 and 4 consider it to be a case of relaxation of age eligibility in the case of petitioner, then his case may be considered for appointment on the post of Social Welfare Inspector in the Government service. However, it is made clear that in case the post of Social Welfare Inspector is available in the office of District Panchayat, Bharuch, the petitioner may continue there as substantive appointee and the aforesaid exercise may not be undertaken. The aforesaid exercise may be undertaken only in case where the petitioner has to be shifted from the office of District Panchayat Bharuch to

adjust some other selectee in pursuance of the aforesaid advertisement. There is another option left to the respondents to adjust the petitioner in some other District Panchayat on the post of Social Welfare Inspector. While deciding this matter, the respondents shall keep in mind the fact that the petitioner is a double graduate and he was appointed on the post of Social Welfare Inspector in the District Panchayat after having selected by the Gujarat Panchayat Service Selection Board. Inter-District transfer of service was permissible, and the petitioner has been protected by interim relief of this Court. His representation made for Inter-District transfer in pursuance of directions of this Court in earlier petition has not been decided by the Development Commissioner and the petitioner, under the interim relief of this Court, is working for all these years on the post of Social Welfare Inspector. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)